TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 643.

THE UNITED STATES, APPELLANTS,

vs.

WILLIAM ALLISON.

APPEAL FROM THE COURT OF CLAIMS.

FILED OCTOBER 6, 1875.

SUPREME COURT OF THE UNITED STATES.

No. 643.

THE UNITED STATES, APPELLANTS,

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WILLIAM ALLISON.

APPEAL FROM THE COURT OF CLAIMS.

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1 In the U. S. Court of Claims.

WILLIAM ALLISON
vs.
THE UNITED STATES. } No. 7343.

Petition.—Filed June 30, 1873.

To the honorable the Court of Claims of the United States:

The petition of William Allison, of the city of Washington, in the District of Columbia, respectfully represents, that on the 30th day of June, A. D. 1866, he was employed by the Government of the United States in the Government Printing-Office, in the said city of Washington, at the agreed sum and price of one hundred and seventy , and that he continued in the employ of the said Government of the United States until the thirtieth day of June, 1867, and receiving from the said Government of the United States the aforesaid sum of one hundred and seventy dollars as a compensation for said services during the year, which was regularly paid him by the disbursing-officer, *disbursing-officer*, and that he thereby became and was an employee in the Interior Dept., in the city of Washington aforesaid.

Your petitioner further represents that the Congress of the United States did, at the second session of the Thirty-ninth Congress, pass a joint resolution giving additional compensation to certain employees in the civil service of the United States, which joint resolution was approved by the President of the United States on the 28th day of February, 1867.

And your petitioner further respectfully represents that during the year commencing the thirtieth day of June, A. D. 1866, and ending on the thirtieth day of June, A. D. 1867, the gross amount of compensation allowed and paid him by the Government was one hundred and seventy dollars.

That by the terms of the said joint resolution of Congress the United States agreed to pay your petitioner the additional twenty per centum on the aforesaid sum received by him as aforesaid, from the thirtieth day of June, 1866, to the thirtieth day of June, 1867.

Your petitioner further respectfully represents that, believing himself entitled to the said additional compensation under said resolution, he made application to the proper officer of the Treasury Department having the power to decide upon his application, to wit, the First Comptroller thereof, for payment of the same, but without success, that officer deciding that your petitioner did not come within the resolution referred to.

Your petitioner further respectfully represents that he has at all times borne true and faithful allegiance to the Government of the United States, and that he has not in any way or manner voluntarily aided, abetted, or given encouragement to rebellion against it.

Your petitioner therefore prays judgment against the United States for the sum of thirty-four dollars, the amount of twenty per centum on said one hundred and seventy dollars compensation received by him as aforesaid.

(Signed) J. DANIELS,
Attorney for Claimant, Washington, D. C.

DISTRICT OF COLUMBIA,
City of Washington, ss:

J. Daniels, being duly sworn, deposes and says that he is the attorney for the above-named claimant; that no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made, except as in said petition stated; that said claimant is justly entitled to the amount claimed from the United States, after allowing all just credits and offsets; and that deponent verily believes the facts stated in said petition are true.

(Signed) J. DANIELS.

Sworn and subscribed to before me this 28th day of June, 1873.
[SEAL.] T. I. GARDNER, *J. P.*

2 In the United States Court of Claims.

WILLIAM ALLISON
vs.
THE UNITED STATES. } No. 7343.

And now comes the above-named claimant, by his attorney, and moves the court for leave to amend his petition as follows, that is to say; the petitioner in his petition claims judgment for the sum of thirty-four dollars, and now alleges that the evidence shows that he is entitled to receive the sum of fifty-five dollars and ninety cents. The claimant therefore asks that his petition may be amended so as to make it conform to the facts as proved by the evidence.

J. DANIELS,
Claimant's Atty.

AT CHAMBERS.

Amendment allowed.

C. C. NOTT, *Judge.*

3 In the Court of Claims.

WILLIAM ALLISON
vs.
THE UNITED STATES. } 7343.

At a Court of Claims held at the Capitol, in the city of Washington, the 17th day of May, A. D. 1875, judgment was ordered to be entered up as follows:

The court, upon the consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said William Allison, claimant, have and recover of and from the United States the sum of fifty-five dollars and ninety cents.

By the court.

A true copy of record.

4 In the Court of Claims of the United States, Dec. term, 1874.

WILLIAM ALLISON
vs.
THE UNITED STATES. } No. 7343.

From the judgment rendered in the above-entitled cause on May 17,

1875, in favor of claimant, the defendants, by their Attorney-General, on the 8th day of July, 1875, make application for and give notice of an appeal to the Supreme Court of the United States.

THOMAS SIMONS,
Asst. Atty. General.

Filed July 8, 1875.

AT CHAMBERS.

Allowed.

C. D. DRAKE, *C. J.*

5 United States Court of Claims.

WILLIAM ALLISON
vs.
THE UNITED STATES.

FINDINGS OF FACT.

I. Under and in pursuance of the act 22 February, 1867, (14 Stat. L., p. 398,) the Senate, on the 26th day of February, 1867, elected the first Congressional Printer; but the Superintendent of Public Printing continued in charge of the Government Printing-Office up to and including the 28th February, 1867, and the Congressional Printer, so elected as aforesaid, did not take possession of the Government Printing-Office, nor enter upon the duties of Congressional Printer, until the 1st day of March, 1867.

II. On the 28th February, 1867, the claimant was an employé in the Government Printing-Office, being paid by the day. During the fiscal year ending June 30, 1867, he worked 236 days, and received therefor $279.48, twenty per cent. whereof is $55.90.

And the Court of Claims, at the claimant's request, makes the following additional finding, to wit:

In 1867 the commission of the Superintendent of Public Printing was made out and recorded in the Department of the Interior, and the seal of the Department was affixed thereto, pursuant to the provisions of the act 31st May, 1854, (10 Stat. L., p. 297, § 3.)

And upon the foregoing findings of fact, the Court of Claims decides, as its

CONCLUSION OF LAW,

that the employés in the Government Printing-Office, on the 28th of February, 1867, were employés in a bureau or division of the Department of the Interior, within the meaning of the Joint Resolution 28 February, 1867, (14 Stat. L., p. 569.)

NOTT, J., delivered the opinion of the court:

When the 20-per-cent. cases were first before this court, it was held that the twenty-per-cent. resolution, 28th February, 1867, (14 Stat. L., p. 569,) was a remedial statute, designed to increase the salaries of those persons in the civil service whose compensation was limited by law. Conversely, it was thought that the statute did not extend to ordinary employés, whose compensation was unlimited, and who were receiving the market-value of their services, and it was not supposed that the character of the compensation, whether by the day, the month, or the piece, could affect the character of their employment, nor that the purpose of

Congress could have been to thrust an additional compensation upon those who were receiving all that they had specifically contracted for. (Baker's Case, 4 C. Cls. R., p. 227.) The Supreme Court, however, subsequently held that laborers, mechanics, machinists, &c., employed
6 by the Government, under an Executive Department, are in the civil service, and entitled to the benefits of the resolution. But a distinction was made by the Supreme Court between those persons who were paid by the piece and those who were paid by time. Thus, if a man were employed in the Bureau of Engraving and Printing, under the immediate direction ot a Government officer, and paid by the day, he was in the civil service; but, if another were employed in the same room and under the direction of the same officer, and upon the same work, but was paid by the piece, he was not in the civil service. (Twenty-per-cent. Cases, 9 C. Cls., p. 103.) Therefore, in the class of cases now before the court, those printers who were paid by the "em" have been excluded, and the decision in this case will apply only to those paid by the day.

But, apart from the character of their employment, a question arises as to whether the Government Printing-Office is embraced in the terms of the twenty-per-cent. resolution. It enumerates the Interior Department, "or any bureau or division thereof," and the question now is whether, on the 28th February, 1867, the Government Printing-Office was "a bureau or division thereof." The doubt arises from the complex character of that office, as will be seen by the following enactments:

By the act 26th August, 1852, (10 Stat. L., p. 30,) the Government Printing-Office was designed to do the public printing for both the legislative and executive departments of the Government. It was placed under the charge of a "Superintendent of Public Printing," who was appointed by the President and confirmed by the Senate. He was also required to give a bond for the faithful discharge of his duties, which the statute required should be approved by the Secretary of the Interior. He was to receive from the Secretary of the Senate, from the Clerk of the House, and from the several heads of Departments and chiefs of bureaus all matter ordered by Congress or by them respectively to be printed. By the joint resolution 23d June, 1860, (12 Stat. L., p. 117, § 7,) he was also directed to purchase the necessary paper for the public service, "with the approval of the Secretary of the Interior," and to report the amount consumed to the Secretary at the end of every fiscal year. Under him were two public printers, the one elected by the Senate and the other by the House, who were in fact contractors for doing that part of the public printing which related to the two Houses of Congress.

But by the joint resolution 23d June, 1860, these contractors were done away with, and the Superintendent was authorized and directed to have executed the printing for all the departments of the Government. By that statute he was to make certain purchases, subject to the approval of the Joint Committee on Printing of the two Houses, and was to render to the Secretary of the Treasury quarterly a full account of all purchases made by him, of all printing done in his office for each of the Houses of Congress, and for each of the judicial and executive departments. Various other provisions appear, requiring certain of his duties to be performed under the immediate supervision of the legislative department, though, as before stated, he was to make certain purchases only with the approval of the Secretary of the Interior, and was to report to him annually. In a former decision of this court, made before its re-organization in 1863, it was held as follows:

"Congress has power to create an office, the duties of which shall be

connected with the business of either or both Houses of Congress, and also with the business of the executive department of the Government, but it cannot authorize either House to fill it." "If no special mode of appointment consistent with the Constitution be prescribed by law, then it can only be filled by the President, by and with the advice and
7 consent of the Senate. The office of Superintendent of Public Printing is of that character. His duties relate as well to the business of both Houses of Congress as to that of the executive department of the Government, and the statute which created his office does not direct how or by whom it shall be filled. He is, therefore, appointed by the President, by and with the advice and consent of the Senate." (Nicholson's Case.)

It was also held "that an officer of either House, in the sense of the Constitution, must necessarily be one whose duties are confined to the business of that House," which "can have officers for no other purpose; and those officers are but its agents, and cannot have powers more extensive than those of their principal."

But assuming that the Superintendent of Public Printing was an officer in the executive department of the Government, and that his office was a division or bureau of the Interior Department, there still remains some statutory complications occasioning renewed doubt.

The twenty-per-cent. resolution was approved on the 28th February, 1867. On the 22d February, 1867, was also approved the act providing for the election of a Congressional Printer. (14 Stat. L., p. 398.) It provided that the Senate should elect some competent person "to take charge of and manage the Government Printing-Office;" and, also, "that from and after the passage of this act and the election of a Congressional Printer, in pursuance thereof, the office of Superintendent of Public Printing shall be abolished;" and, further, that "this act shall take effect from and after its passage." On the 26th February, 1867, the Senate elected the first Congressional Printer. If he be a public officer, it is certain that he is not an officer in the executive department of the Government, and that his office is not a bureau or division of the Interior Department. But, while the election took place on the 26th February, two days before the approval of the twenty-per cent. resolution, the Congressional Printer did not give security as required by law, nor enter into the possession of the office, until the 1st March; and the Superintendent of Public Printing continued in charge of the Government Printing-Office up to and including the 28th February, 1867.

When the last Twenty-per-cent. Cases were before this court, (9 C. Cls. R., p. 302,) it was held that laborers in the Medical Department of the Army were not employés in the civil service, nor in a division or bureau of the War Department; but the Supreme Court, on appeal, held that they were. In view of the radically different constructions which this court and the Supreme Court have repeatedly given to this twenty-per-cent. resolution, we deem it just to both parties, claimants and defendants, to withhold a final decision in all of the cases submitted, and to render judgment in one as a test-case, to be carried to the Supreme Court.

For the purposes of an appeal, judgment will be accordingly rendered in favor of the claimant for $55.90.

8 In the Court of Claims.

WILLIAM ALLISON
vs.
THE UNITED STATES. } No. 7343.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause and the final judgment of the court thereon; of the application of the Attorney-General for the allowance of an appeal, as filed in the clerk's office July 8, 1875, and of the order of the Chief-Justice at chambers allowing the same; of the findings of fact by the court and the conclusion of law thereon; and of the opinion of the court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this seventh day of September, 1875.

[SEAL.] JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) No. 643. The United States, appellants, vs. William Allison. Court of Claims. Filed 6th October, 1875.

In the Supreme Court of the United States.

OCTOBER TERM 1875.

THE UNITED STATES, APPELLANTS,
vs.
WILLIAM ALLISON. } No. 643.

APPEAL FROM THE COURT OF CLAIMS.

Brief for the United States.

In the Supreme Court of the United States.

OCTOBER TERM 1875.

THE UNITED STATES, APPELLANTS,
vs.
WILLIAM ALLISON. } No. 643.

APPEAL FROM THE COURT OF CLAIMS.

Brief for the United States.

The question involved in this case is: Whether a person who upon the 28th of February, 1867, was an employé in the Government Printing-Office, paid by the day, was entitled to the benefits of the resolution on that day passed by Congress, and heretofore construed by this court in the Twenty per cent. cases. (20 Wall., 179, and 13 Wall., 568.)

The difficulty arises out of the peculiar condition of the Government Printing-Office upon the day of the passage of such resolution.

Before the adoption of the joint resolution of June 23, 1860, (12 Stat., 117,) the printers in that office were employés of two parties, elected respectively by each house of Congress to do the public printing, in accordance with the act of August 26, 1852, (10 Stat., 30.) After the adoption of that resolution they became employés of the Superintendent of Public Printing. This officer was

created by the above act of 1852, with the duties of supervising the printing executed by the two Congressional Printers above mentioned. By the above joint resolution, however, he was made the head of a sort of bureau, and was required to employ a foreman and such other printers as might be required.

This superintendent was not expressly assigned by statute to either one of the great Departments. He was appointed by the President and confirmed by the Senate, was required by the act of 1852 (sec. 2) to "give bond with two sureties, to be approved by the *Secretary of the Interior*," and it appears that in 1867 his commission was made out and recorded in that Department, and its seal was affixed thereto, as if under the act of May 31, 1854, sec. 3, (10 Stat., 297.)

In this state of the case the following act was passed, approved July 22, 1867:

SEC. 1. "That the Senate shall elect some competent person who shall be a practical printer to take charge of and manage the Government Printing-Office."

SEC. 2. "That the person so elected shall be deemed an officer of the Senate, and shall be designated 'Congressional Printer.' He shall superintend the printing and binding," &c.

SEC. 3. "*That from and after the passage of this act and the election of a Congressional Printer in pursuance thereof the office of Superintendent of Public Printing shall be abolished*," &c.

SEC. 4. "That this act shall take effect from and after its passage," &c.

Accordingly the Senate elected such "Congressional Printer" upon the 26th of February, 1867, but he did not take possession of the Government Printing-Office or enter upon his duties until March 1, 1867.

Upon the whole, then, it appears that whereas the act of February 28, 1867, gives twenty per cent. additional compensation "to the following-described persons *now employed* in the civil service," &c., viz, among others, *employés in the Department of the Interior*, an act had been passed *six days before* the 28th of February, 1867, attaching the Bureau of Public Printing to the Senate after the happening of an event that took place, as was well known to Congress, *two days before* this 28th of February.

On behalf of the United States error is assigned:

(1.) In the conclusion of law by the court below, that the employés in the Printing Office were, under the above circumstance, employés of the Department of the Interior on the 28th of February, 1867, within the meaning of the joint resolution of that date; and,

(2.) In the amount of the judgment rendered below.

1. Congress, by the resolution in question, did not dispense bounty to *all* who had been employed in that Department at any time after June 30, 1856. In order to be entitled, the person must have been so employed at the time of the passage of the resolution. The words are, NOW *employed*. Death, or resignation, or dismissal from office on (say) the 27th of February, or on any day before, would have prevented the person so affected from sharing in the bounty. It was for Congress to define the extent of its gift, and no equity can be set up before any other department for the purpose of reviewing or enlarging it.

To the same effect would have been a transfer, upon the day before, of an officer from the Department of the

Interior to some Department not included in the resolution.

In the present case, in accordance with public policy, the whole Bureau was transferred on the 26th of February, or before, from the executive to the legislative department.

The time of transfer was defined by the *election* of the Congressional Printer, not by his entrance upon his duties. The person chosen Printer became such by *election*, and not by taking possession of the Printing-Office, or entering upon his official duties. (United States *vs.* Le Baron, 19 How., 73; United States *vs.* Bradley, 10 Pet., 344.)

The resolution of February 28, 1867, operated upon the state of things on that day ("now") existing *in contemplation of law*, and the state of things so contemplated could not be affected by *accidents* affecting some individual intrusted with a part therein; such as, whether illness, or death, or carelessness, or any other incidental circumstance, prevented his seasonable co-operation. If an outsider were qualified to rejudge the action of Congress herein, reasons would not be wanting to show that it was wise to make the consummation of the policy of such transfer depend upon a great public event, the time of which is easily ascertained, rather than upon a private transaction the evidence of which may always be contradicted, and in a short time thereafter so rapidly disappears.

It is also submitted that there is nothing in the law existing previously to the 22d of February, 1867, that attached the Superintendent of Public Printing and the parties in his employment to the Department of the Interior. Whether they were such is matter of *law*, *not*

of *fact*. Taking the history of the office in the legislation above stated, it seems probable that Congress at all times intended that this Bureau should be *legislative* in character, not executive. It has always been under the control of a congressional committee, (Act of 1852, sec. 12, 10 Stat., 34,) and that appears to be a very powerful argument that it was not intended to be an *executive* Bureau. Although the Constitution requires (Art. 1, sec. 2 (5), and sec. 3 (5)) each House to elect its *own* officers, there seems to be no constitutional objection to making one who is an officer *of both Houses* to be appointed by the President and confirmed by the Senate.

2. A subordinate error in the judgment of the Court of Claims is that it awards to the claimant a percentage upon his earnings after the 1st of March, 1867, (Record, p. 3, "finding" II, and p. 5, bottom,) although *it is agreed* that at that day he ceased to answer the description of *an employé in the Department of the Interior*. It is clear that he is not entitled to twenty per cent. upon any earnings in the civil service of the United States not of the *character* required by the joint resolution. Such were all his earnings under the "Congressional Printer," no matter when begun.

S. F. PHILLIPS,
Solicitor-General.

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Supreme Court of the United States.

OCTOBER TERM, 1875.

No. 643.

THE UNITED STATES, APPELLANTS,

vs.

WILLIAM ALLISON.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE APPELLEE.

JAMES A. GARFIELD,
J. DANIELS,
Counsel for Appellees.

Judd & Detweiler, Printers.

Supreme Court of the United States.

OCTOBER TERM, 1875.

No. 643.

THE UNITED STATES, APPELLANTS,

vs.

WILLIAM ALLISON.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE APPELLEE.

This is an appeal from a judgment of the Court of Claims, awarding to the appellee, an employé in the Government Printing Office, the sum of $55.90, in pursuance of the provisions of the joint resolution of Congress of February 28th, 1867, granting an increase of 20 per cent. to the employés in the several bureaus and divisions of the Executive Departments. This case was pending in the Court below when the last 20 per cent. cases were decided here, and that decision was supposed to be decisive of this case. It was held that the joint resolution covered persons employed by the day, but not those working by the piece. That decision of the Court has been followed in the cases of which this is a representative. See Bell's case, (20 Wall., 188.)

The judgment of the Court below was based upon the following

FINDINGS OF FACT.

I. Under and in pursuance of the act 22d February, 1867, (14 Stat. L., p. 398,) the Senate, on the 26th day of February, 1867, elected the first Congressional Printer; but the Superintendent of Public Printing continued in charge of the Government Printing Office up to and including the 28th February, 1867, and the Congressional Printer, so elected as aforesaid, did not take possession of the Government Printing Office, nor enter upon the duties of Congressional Printer, until the 1st day of March, 1867.

II. On the 28th February, 1867, the claimant was an employé in the Government Printing Office, being paid by the day. During the fiscal year ending June 30, 1867, he worked 236 days, and received therefor $279.48, twenty per cent. whereof is $55.90.

And the Court of Claims, at the claimant's request, makes the following additional finding, to wit:

In 1867 the commission of the Superintendent of Public Printing was made out and recorded in the Department of the Interior, and the seal of the Department was affixed thereto, pursuant to the provisions of the act 31st May, 1854. (10 Stat. L., p. 297, § 3.)

And upon the foregoing findings of fact, the Court of Claims decides, as its

CONCLUSION OF LAW,

that the employés in the Government Printing Office, on the 28th of February, 1867, were employés in a bureau or division of the Department of the Interior, within the meaning of the joint resolution 28th February, 1867. (14 Stat. L., p. 569.)

In the motion of the Solicitor General to advance this case, it was alleged that it involved but a single special point differing from the 20 per cent. cases already decided by this Court. (20 Wall., 179, and 13 Wall., 568.) The order of the Court of December 6th, advancing the case, declares that, "as a special point only is left undecided by this

Court under the class of which this is one, the point can as well be presented by printed argument as by one that is oral."

In the opinion delivered in the Court below, (Record, pages 3 [—] 5,) the decision seems to have turned upon the single question, "When was the office of the Superintendent of Public Printing actually abolished by the operation of the act of February 28, 1867?" And this we suppose was the single undecided point referred to in the motion of the Solicitor General and the order of the Court.

The argument of the Solicitor General has incidentally raised an additional question of very great importance, which will be noticed in the course of this argument.

The errors assigned on behalf of the United States, are—

"*First.* On the conclusion of law, by the court below, that the employees in the Government Printing Office were, under the above circumstances, employees of the Department of the Interior on the 28th of February, 1867, within the meaning of the joint resolution of that date; and, *Second*, in the amount of the judgment rendered below." (Brief of the Solicitor General, page 3.)

POINTS FOR APPELLEE.

I.

Before the passage of the act of February 22, 1867, *the Government Printing Office was a bureau or division of the Department of the Interior.* This is evident, because—

First. The Superintendent of Public Printing was an officer of the United States, holding an office established by law. He was appointed to that office by the President, with the concurrence of the Senate, and it is one of the facts found by the court below, that his commission was made out and recorded in the Department of the Interior, and the seal

of the Department was affixed thereto, in pursuance of the act of May 21, 1854, (10 Stat. at Large, 297, sec. 3,) which requires that "the commissions of all officers, under the control of the Secretary of the Interior, shall be made out and recorded in the Department of the Interior, and the seal of said Department affixed thereto."

Second. He was required by law to give bond with two sureties, to be approved by the Secretary of the Interior, in a penalty of $20,000, for the faithful discharge of his duties, (10 Stat. at Large, 30, sec. 2,) and the amount was increased to $80,000 by the joint resolution of January 12, 1866, (14 Stat. at Large, 347.)

Third. All his purchases of materials for the public printing, in open market, were made "by and with the approval of the Secretary of the Interior." (12 Stat. at Large, 117, sec. 7.)

Fourth. The extension of the building for the office of public printing, in 1872, for which $45,000 was appropriated, was made under the supervision of the supervising architect of the Capitol extension, (17 Stat. at Large, 501,) who is himself under the control of the Secretary of the Interior.

Fifth. He was required to make a report to the Secretary of the Interior at the end of each fiscal year, of all the paper received and used, and in what works or publications it was used. (12 Stat. at Large, 117, sec. 7.)

Sixth. The Secretary of the Interior has frequently recognized this relation of the Government Printing Office to his Department in his annual reports. (See especially Reports for 1861 and 1865.)

Seventh. The opinion of this Court in Manning's case fully sustains this position (13 Wall., 568.) Speaking of the employés at the Washington Jail, the Court say. "Evi-

dently they are employés in a bureau or division of the Interior Department, as their compensation is fixed by the head of that Department, and the officer by whom they are employed is required annually to make a detailed report to that Department of all his official acts."

The chief ground on which error is assigned in the Court below is the assumption that "the whole bureau was transferred on the 26th of February, or before, from the Executive to the Legislative Department." (Brief of the Solicitor General, p. 4.)

On the contrary we maintain that—

II.

The act of February 22 1867, *did not transfer the Bureau of Public Printing to the Senate.*

Because—

First. By the express terms of the act itself the organization and duties of the bureau are continued in full force, except that the appointment of its chief is taken from the President and given to the Senate. (14 Stat. at Large, 398, chap. LIX, sec. 1, 2.)

"He [the person elected by the Senate] shall superintend the printing and binding of the Journals and such other documents as shall be ordered by the houses of Congress, and shall superintend the execution of all the printing and binding for the respective Departments of the Government now required by law to be executed at the Government Printing Office, *and shall in all respects be governed by the laws in force in relation to the Superintendent of Public Printing and the execution of the printing and binding.* (*Ib.*, sec. 2.)

Second. The clause of the act which it is alleged trans-

ferred the bureau to the Senate is peculiar. It is in these words: "The person so elected shall be deemed an officer of the Senate, and shall be designated Congressional Printer." (*Ib.*, sec. 2.) The essential character of an office established by law cannot be changed by changing its name. To "deem" a person an officer of the Senate does not make him so. By whatever name its chief may be known, the Government Printing Office is established by law, not by the Senate. His duties relate not to the Senate, nor to the House, nor to Congress alone, but to all the Executive Departments as well.

Third. The laws now in force relating to the Public Printing Office demonstrate that it is still an Executive bureau. The character of the duties and obligations of the chief of the bureau, as it now exists since the act of February 22, 1867, are set forth in Title XLV of the Revised Statutes.

(A.) He must still file his bond with the Secretary of the Interior in the penal sum of $80,000. (Rev. Stat., sec. 3759.)

(B.) He must deliver to the Secretary of the Interior all books and documents directed by law to be printed for the use of the Government, except those printed for the special use of Congress, the President, and the several Departments. (Sec. 3813.)

(C.) He must still make his annual report to the Secretary of the Interior. (Sec. 3820.)

(D.) Congress appropriates about $2,000,000 annually to be expended by him for the several departments of the Government, and he must render the account of his receipts and expenditures in the manner required by other disbursing officers of the United States. (Sec. 3817.)

(E.) He must report to the Solicitor of the Treasury every

case of default on the part of contractors to furnish materials for the public printing. (Sec. 3777.)

(F.) If he defraud the United States while in office, or corruptly collude with others to defraud them, he may be tried by any court of competent jurisdiction, and if found guilty shall be sentenced to fine or imprisonment, and forfeiture of his office. (Sec. 3784.)

What office will he forfeit by judicial sentence? Manifestly an office under the United States. It will not be claimed that any court can depose an officer of the Senate. The Solicitor General says: "It seems probable that Congress, at all times, intended that the bureau should be legislative in character, not executive. It has always been under the control of a Congressional committee. That appears to be a very strong argument that it was not intended to be an Executive bureau." (Solicitor General's Brief, p. 5.)

We are at a loss to understand what is meant by a "Legislative Bureau." The fact that a Congressional committee is charged with certain duties in reference to the public printing, does not take from the Government Printing Office its character as an office established by law, any more than the action of a committee on naval affairs makes the Navy Department a legislative department.

If by changing its name, and making its chief elective by the Senate, a bureau of an Executive department may be transferred to the Senate, Congress can empower the Senate or the House to elect all the Executive officers whose appointment the Constitution vests in the President.

Fourth. Section 1 of the act under consideration provides that "the Senate shall elect some competent person, who shall be a practical printer, to take charge of and manage the Government Printing Office." (14 Stat. at Large, 398.)

The Government Printing Office being "an office established by law," it appears to be too plain for argument that

the clause of the act of Congress which confers upon the Senate the power to appoint its chief officer is void, being clearly in conflict with the provisions of article 2, section 2, of the Constitution. This section was construed in 1823 by the foremost of American jurists; and that construction has never since been changed or doubted. In *The United States* v. *Maurice et al.*, (2 *Brockenborough*, 97,) Chief Justice Marshall says: "This clause makes a general provision that the President shall nominate and, by and with the consent of the Senate, appoint to all offices of the United States, with such exceptions only as are made in the Constitution; and that all offices (with the same exceptions) shall be established by law." In the same opinion the Chief Justice has defined the word "office" as employed in the Constitution. He says: "An office is defined to be a public charge or employment, and he who performs the duties of the 'office' is an officer. If employed on the part of the United States, he is an officer of the United States."

This definition has been substantially adopted, and even more succinctly expressed by this Court in *United Sta'es* v. *Hartwell*, (6 *Wall.*, 385,) where the Court say: "An office is a public station, or employment, conferred by the appointment of government. The term embraces the idea of tenure, emolument and duties."

This definition applies perfectly to the chief of the Government Printing Office.

In the light of this opinion and of the laws already referred to, it is clear beyond question that the Government Printing Office is an office of the United States; and the Constitution requires it to be filled by an appointment by the President, unless the Congress shall vest the appointment in the head of an Executive Department or in a Court. The act of the Senate in electing a chief of the Government Printing Office does not come within the power conferred upon either House of Congress to elect its own officers. (Article 1, secs. 2, 3.)

It was very properly held by the Court of Claims in Nich-

olson's case, (1863,) "that an officer of either House, in the sense of the Constitution, must necessarily be one whose duties are confined to the business of that House. Each can have officers for no other purpose; and those officers are but its agents, and cannot have powers more extensive than their principal."

It has already been shown that the powers and duties of the chief of the Government Printing Office extend far beyond the duties of either House of Congress. In a later case—Clapp *v.* The United States, (7 Nott, 351)—the Court of Claims held that, by the act of February 22, 1867, the employés in the Government Printing Office did not become employés of the Senate.

Fifth. That the office of Superintendent of Public Printing, established by the act of August, 1852, (—— Stat. at Large,) is an office of the United States, has been recognized by this Court in *United States ex rel., Beverly Tucker v. Seaman*, (17 How., 225.) Beverly Tucker, printer to the Senate, applied to the circuit court of the District of Columbia for a mandamus to compel Seaman, the Superintendent of Public Printing, to deliver the manuscript of the agricultural report to him (Tucker) to be printed. The petition was refused, and the case was brought to this court by writ of error. The argument for the Superintendent was made by the Attorney General of the United States. The court dismissed the writ on the ground that the duties of the Superintendent on the subject referred to in the petition for the mandamus "were not merely ministerial, but that he had inquiries to "make before he could execute the authority he possessed. "* * He was obliged to examine evidence, and form his "judgment before he acted; and whenever that is to be "done it is not a case for a mandamus."

Sixth. Congress seems recently to have taken the same view of the subject, for by the act of June 20, 1874, (chap.

328, p. 88,) "so much of the act of February 22, 1867, as provides for the election of a Congressional Printer by the Senate and makes him an officer of the Senate is repealed, and such officer is declared an officer of the United States, to be appointed by the President by and with the advice and consent of the Senate; said repeal to take effect on the first vacancy."

III.

But it may be held that the act of February 22, 1867, does abolish the office of Superintendent of the Public Printing. If so, it is necessary to determine when his office ceased to exist. Section 3 provides "that from and after the passage of this act, and *the election of the Congressional Printer in pursuance thereof*, the office of the Superintendent of Public Printing shall be abolished."

From this it appears that the abolition was to take effect upon the performance of an unconstitutional act, viz: the election by the Senate of a person to fill an office of the United States, established by law. We perhaps may successfully maintain that the section is inoperative; and that, in contemplation of law, the office was not abolished at all. But if the section be held valid, it is clear that the abolition of the office took effect, not upon the 22d February, the date of the passage of the act, nor upon the 26th of February, the date when the Senate voted for a Congressional Printer.

First. The act maintains all the laws, relating to the bureau, in full force, except that the title of its chief is changed. No hiatus is allowed between the administration of the Superintendent of Public Printing and that of the Congressional Printer. Their terms of office are made to join without an interval. If this be not so, there was a gap of at least three days, during which all the important transactions of the Government Printing Office were illegal. Such a construction is excluded by the language of the act

itself. Section 3 provides: "That from and after the passage of this act, *and the election of a Congressional Printer in pursuance thereof*, the office of the Superintendent of Public Printing shall be abolished."

How can a person become Congressional Printer *in pursuance of this act?* Section 1 provides: "That the Senate shall elect a competent person to take charge of and *manage* the Public Printing Office. He was not invested with the powers and duties of the office by the mere vote of the Senate. He might have declined the office to which he was elected. There could be no filling of the office in pursuance of the act, until the person chosen by the Senate completed the transaction by acceptance.

Section 2 provides "that the person so elected shall, in all respects, be governed by the laws in force in reference to the Superintendent of Public Printing.

But these laws provide, among other things, that "the Superintendent shall give bonds, with two sureties to be approved by the Secretary of the Interior, in the penal sum of $80,000, for the faithful discharge of his duties." (10 Stat. at Large, 347.) He is authorized to discharge his duties only under bond, the giving of such bond and its approval by the Secretary of the Interior, constituting the acceptance of the office by the Congressional Printer. It is the only evidence recognized by the statute that he has accepted.

The Court below found as a fact that he did not enter upon the duties of Congressional Printer until the 1st day of March, 1867. The record discloses no evidence that he accepted the office before that day. The Court below also finds as a fact, that the Superintendent of Public Printing continued in office until the 1st day of March, 1867. That date must, therefore, in contemplation of law, mark the abolition of the office of Superintendent, if the statute abolishing it is valid.

Second. The view herein taken is strongly supported by

the opinion of the circuit court of the United States for the third circuit, in Bowerbank *vs.* Morris, (Wall. Rep., 119,) Tillman, C. J., delivering the opinion of the court, and says:

"A removal from office may be either *express*, that is, by a notification by order of the President, that an officer is removed; or *implied*, by the appointment of another person to the same office. But in either case the removal is not completely effected until notice is actually received by the person removed. In general, all persons who act by authority derived from others may proceed to execute business until notice of revocation of their authority, and their acts between the time of revocation of their power and of receiving notice of such revocation, are held good."

Griffith, J., concurring in the opinion of the chief judge, says:

"The new officer must accept and give notice, by showing his commission, or otherwise, to his predecessor, and from that time he must be considered as the officer."

The record in the pending case contains no evidence that any notice was served on the Superintendent of Public Printing, until the 1st of March; and that was the date when his successor was completely invested with the office.

Third. The Solicitor General insists that the *election* of the Congressional Printer, not his entrance upon his duties, marks the time of transfer, and cites in support of this view, United States *vs.* LeBaron, (19 How., 73,) and United States *vs.* Bradley, (10 Peters, 343.)

Both cases relate to officers appointed by the President and confirmed by the Senate, and resemble the case at bar very remotely.

So far as the United States *vs.* LeBaron is applicable, it strongly supports the position herein maintained. In that case the question was raised, "When does the bond of a deputy postmaster take effect?" The court say, (pp. 76–7:)

"Our opinion is, that the bond speaks only from the time when it was accepted by the Postmaster General. * * * The deputy postmaster cannot act until his bond is accepted by the proper officer of the Department."

So, in the pending case, we hold that the Congressional Printer could not act until his bond was approved by the Secretary of the Interior.

The other case cited (10 *Peters*, 343.) grew out of a suit brought by the United States against the sureties of Hall, a defaulting paymaster of the army. It was claimed by counsel for the defendant that the bond was not in accordance with law, and hence that Hall was not lawfully a paymaster. The Court held that Hall, "having received Government moneys as paymaster, must account for them as paymaster," and that the bond, though irregular in some respects, was valid.

In delivering the opinion of the Court, Justice Story remarked that "The giving of the bond was not a condition precedent to his authority to act as paymaster." This was clearly *obiter dictum*—the question at issue before the Court being the validity of the bond. We have already seen that, in the later case, (19 *Howard*, 73,) the Court held that a Deputy Postmaster could not act until his bond had been accepted by the Post Office Department.

IV.

The Solicitor General says that "a subordinate error in the judgment of the Court below is that it awards to the claimant a percentage upon his earnings after the 1st of March, 1867, although it is agreed that at that day he ceased to answer the description of *an employé in the Department of the Interior*. (Brief, p. 5.)

We answer, it is *not agreed* that on the 1st of March the Government Printing Office ceased to be a bureau or division of the Interior Department. (See Point II above.) But

should this Court so hold, it still does not appear that any part of the award to the claimant was for services rendered after the 1st day of March.

The Court below find as a fact that "on the 28th of February, 1867, the claimant was an employé in the Government Printing Office, and that during the fiscal year ending June 30th, 1867, he worked 236 days, and received compensation therefor $297.48, twenty per cent. whereof is $55.90 The Superintendent of Public Printing was authorized to "cause work to be done on the public printing in the Government Printing Office, at night as well as through the day, during the session of Congress, when the exigencies of the public service require it." (10 Stat. at Large, 34.) Furthermore, the 28th of February was the 243d day of the fiscal year, and all the services of the claimant may have been performed within that time. There is nothing in the record to contradict this; and, in the absence of any evidence to the contrary, it is to be presumed that the computation of the Court below was in accordance with the statute.

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